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In re Patent No. 6,881,564
Issued: April 19, 2005
Application No. 10/070,464
Filed: July 18, 2002
Atty. Dkt. No.: GH-007

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: **OFFICE OF PETITIONS**
: DECISION REGARDING PTA
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This decision is in response to the "REQUEST FOR RECONSIDERATION OF DECISION REGARDING PATENT TERM ADJUSTMENT," filed August 21, 2006. This petition is being treated as timely filed under 37 CFR 1.705(d).

The request for reconsideration of patent term adjustment ("PTA") under 37 CFR 1.705(d) is **DISMISSED**.

The instant application issued as U.S. Pat. No. 6,881,564 on April 19, 2005 with a PTA of 163 days. The instant application for PTA was timely filed May 12, 2005. Applicants argue that the application should have been accorded a PTA of 283 days on the grounds that there was no failure by applicants to engage in reasonable efforts to conclude prosecution.

A review of the application history reveals that an adjustment of 283 days under 37 CFR 1.702(a)(4) was attributed to the Office. In accordance with 37 CFR 1.703(a)(4), the adjustment began June 11, 2004, the day after the date that is 4 months from the date upon which the issue fee was paid, and ended April 19, 2005, the date of issuance of the patent.

The adjustment was properly reduced 120 days in accordance with 37 CFR 1.704(c)(10) in connection with a Rule 312 amendment submitted March 10, 2004.

Applicants argue that the adjustment of 283 days was improperly reduced 120 days with respect to the Rule 312 amendment submitted March 10, 2004. Applicants continue to argue that the submission of the Rule 312 amendment was necessitated by typographical errors appearing in the Notice of Allowance mailed December 10, 2003.

Submission of a request to correct an error or omission in the Notice of Allowance or Notice of Allowability is not considered a failure to engage in reasonable efforts to conclude processing or

examination of an application within the meaning of 37 CFR 1.704(c)(10). See, MPEP 2732. See, also, *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance Has Been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001).

Submission of an amendment under 37 CFR 1.312 constitutes a failure to engage in reasonable efforts to conclude prosecution (or processing) of an application. Moreover, rather than submitting an amendment under 37 CFR 1.312, which causes delays in the patent issuance process, a letter noting the error complained could have been submitted prior to issuance of the patent, or, the error complained of could have been corrected by way of post issuance certificate of correction.

Patentees elected instead to submit an amendment under Rule 312, the consequence of which is an automatic reduction under 37 CFR 1.704(c)(10).

As to patentees' argument that the Examiner's Amendment included in the Notice of Allowability "invited the applicants to file a Rule 312 Amendment should the changes and/or additions be unacceptable," petitioners are again reminded that any amendment submitted pursuant to 37 CFR 1.312 is deemed a failure to engage in reasonable efforts to conclude prosecution within the meaning of 37 CFR 1.704. Further, the amendment was not specifically requested by the examiner, but merely gave applicants the option of submitting an amendment under 37 CFR 1.312.

Accordingly, the patent is entitled to an adjustment of 163 days, as indicated on the patent.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date of this decision. Extensions of time under 37 CFR 1.136 are not available.

Telephone inquiries specific to this matter may be directed to Petitions Attorney Alesia M. Brown at (571) 272-3202.

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